

cause and matter in law, and that it shall appear that the action shall be commenced after the cause thereof shall accrue, and that no such judgment shall be reversed or set aside, or execution thereon delayed, for or by reason of any such imperfection, omission or defect, any law, usage or custom to the contrary notwithstanding.

In *Shafer v. Stonebraker*, 4 G. & J. 345, it was insisted that this Act abolished special demurrers. The Court thought that if the Act were then for the first time to receive a construction, it would be a grave question whether they were not interdicted, but that the practice of every Court in the State had engrafted upon the Act an interpretation that only the legislature could change, and see *Perkins v. Perkins' Ex'rs*, 1 H. & McH. 405. But now by the Code, Art. 75, sec. 6,¹ no special demurrer shall be allowed in any civil case. This was probably considered by the codifiers the equivalent of sec. 36 of the Act of 1856, ch. 112, that no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer; and it is succeeded by sec. 7,² providing that no general demurrer shall be allowed for a mere informal statement of a cause of action or defence, provided such statement is sufficient in substance. The result, therefore, would seem to be that, under the Statutes of Jeofails and the Code, no defect, which would be cured by verdict at common law, or under those Statutes, or by judgment by confession or default, except matter of substance, (which indeed is wanting, but would be aided by verdict, &c., on the ground that it must necessarily have been proven, sec. 9.)³ is available on general demurrer, and no advantage can be taken now, at any time, of matters which were formerly only defects on special demurrer. But it must be recollected that all such defects as have formerly been held defects in substance are still defects in substance, unless the law has been changed in respect of them; see *Kent v. Holliday*, 17 Md. 387. And judgments not resting *wholly* in confession may be reversed for want of the necessary pleadings in proper form, *Laidler v. the State*, 2 H. & G. 277; *Scholls v. Shriver*, 3 H. & J. 490, where the pleadings were entered short and judgment was reversed; *Kerr v. State*, 3 H. & J. 560.⁴

¹ Code 1911, Art. 75, sec. 6; *Gott v. Barnard*, 44 Md. 336. But where the summons is with claim for injunction or mandamus under Code 1911, Art. 75, sec. 128, a special demurrer is necessary to raise the question as to whether this additional relief by way of injunction or mandamus is appropriate under the facts disclosed by the declaration. *C. & P. Tel. Co. v. Mackensie*, 74 Md. 44.

² Code 1911, Art. 75, sec. 7; *McAleer v. Horsey*, 35 Md. 439; *Mitchell v. McCleary*, 42 Md. 374; *State v. German Bank*, 103 Md. 204.

³ See note 2 to 32 Hen. 8, c. 30, and note 16 to 16 & 17 Car. 2, c. 8.

⁴ But now under the Act of 1888, ch. 547, (Code 1911, Art. 75, sec. 9), a judgment cannot be arrested for any matter or cause which might have been the subject of general demurrer to the declaration or other pleadings. See note 3 *supra*.